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Dias, Liyanagamage Ranganath Prabashwara

University of Rochester

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MONROE COUNTY CLERK'S OFFICE
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EXHIBIT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

In the matter of the Application of

Liyanagamage Ranganath Prabashwara Dias,

Petitioner,

-against-

UNIVERSITY OF ROCHESTER,

Respondent.

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

INDEX NO.

VERIFIED
ARTICLE 78 PETITION

Oral Argument Requested

Petitioner, Liyanagamage Ranganath Prabashwara Dias ("petitioner" or "Dr. Dias"), by his undersigned attorney, for his Verified Petition in this Article 78 proceeding, alleges as follows:

THE NATURE OF THE PROCEEDING

1. Dr. Dias brings this Article 78 proceeding to restrain the University of Rochester (the "University") from concluding a critical investigation regarding Dr. Dias's research without considering significant evidence of the University's inappropriate and biased influence on it.

2. This is also an action to require the University to act in a manner consistent with its policies and procedures and in a manner that protects the sanctity of scientific inquiry against biased and flawed investigative processes.

3. Given the draft investigation report's findings and recommendations, the harm of allowing this process to continue is clear and imminent; not only is the University intent on

irrevocably destroying Dr. Dias's career and reputation, but it is content to do so at the expense of academic freedom.

PARTIES AND RELATED PERSONS

4. Petitioner is an individual residing in Monroe County, New York, and employed by the University as a tenure-track assistant professor in the Departments of Mechanical Engineering and Physics and Astronomy.

5. Respondent is a private university with its principal place of business in Monroe County, New York.

6. Dr. Steven Dewhurst is an individual who, at all times relevant herein, was employed by the University as Interim Vice President for Research.

7. Dr. Nick Vamivakas is an individual who, at all times relevant herein, was employed by the University as Dean of Graduate Education and Postdoctoral Affairs for the School of Arts, Sciences and Engineering.

8. Dr. Wendi Heinzelman is an individual who, at all times relevant herein, was employed by the University as Dean of the Hajim School of Engineering and Applied Sciences.

9. Dr. David Figlio is an individual who, at all times relevant herein, was employed by the University as Provost and Gordon Fyfe Professor of Economics and Education.

JURISDICTION

10. This Court may conduct "special proceedings" pursuant to Article 78 of New York's Civil Practice Law and Rules. *See* CPLR §§ 7801-7806.

11. This proceeding pursuant to Article 78 is the proper mechanism for seeking an order to the University to show cause why it should not postpone its final determination into allegations

of research misconduct until it follows the faculty grievance procedures outlined in its faculty handbook (the “Handbook”).

12. Respondent is a “body” subject to judicial review pursuant to Article 78 which defines a body or officer as including “every court, tribunal, board, corporation, officer, or other person, or aggregation of persons, whose action may be affected by a proceeding under this article.” *See* CPLR § 7802(a).

VENUE

13. Venue is proper in Monroe County, which is respondent’s principal place of business, and the place where the University seeks to continue its investigation. *See* CPLR §§ 7804(b) & 506(b).

FACTUAL BACKGROUND

14. In 2017, Dr. Dias became an assistant professor at the University in the Departments of Mechanical Engineering and Physics and Astronomy.

15. Dr. Dias’s area of work is in the highly competitive specialized field of low-temperature, high-pressure superconductivity.

16. In 2023, Dr. Dias and co-authors published an article, *Evidence of near-ambient superconductivity in a N-doped lutetium hydride*¹ (shorthand, the “LuH Paper”), in *Nature*, an international, peer-reviewed journal for science and technological advances.

17. In March of 2023, the National Science Foundation (“NSF”) notified the University that it had received a complaint about Dr. Dias, alleging research misconduct involving the LuH

¹ N. Dasenbrock-Gammon, E. Snider, R. McBride, H. Pasan, D. Durkee, N. Khalvashi- Sutter, S. Munasinghe, S.E. Dissanayake, K.V. Lawler, A. Salamat & R.P. Dias, *Evidence of near-ambient superconductivity in a N-doped lutetium hydride*, 615 *Nature* 244–250 (2023).

Paper. *See* Affidavit of Dr. Dias, Exhibit A (Letter from NSF to Vice President Dewhurst, CC'ing Dr. Dias).

18. From the moment Dr. Dias was notified of the allegations he has vigorously disputed them.

19. The NSF charged the University with investigating the alleged research misconduct (hereinafter "the Investigation")². *Id.*

20. In informing the University of its obligation to investigate this matter, the NSF reminded the University:

Because a professional reputation is involved, fairness, due process, and confidentiality should be considered paramount. There is no presumption of wrongdoing by Dr. Dias or anyone else associated with the alleged research misconduct; rather, your confidential investigation should be designed to determine, without preconceptions, whether research misconduct occurred, and if so, who committed it.

Id. at pg. 1.

21. Consistent with the NSF's instruction, the University's Research Misconduct Policy ("the Policy") describes the University's process for responding to alleged misconduct as one that provides for "an objective examination of the facts [and] protection of individual rights." *See* Affidavit of Dr. Dias, Exhibit B (Faculty Handbook), pg. 58.

22. The Policy requires the provost to provide "general supervision" over the Investigation process. *Id.*

23. The Policy promises "[t]he person(s) whose conduct is being investigated will be given a meaningful opportunity to respond to [the allegations] in writing and in person before the

² The NSF also reminded the University of the obligation to comply with 45 CFR Subtit. B, Ch. VI, Pt. 689, regarding Research Misconduct.

committee. This shall include access to the relevant documents (and other evidence) and a reasonable period of time to prepare an appropriate response.” *Id.* at pg. 59.

24. From the beginning of the Investigation, the University, through administrators, including Vice President Dewhurst and Dean Heinzelman, and the committee formed to investigate the allegations (hereinafter “the Investigation Committee”), demonstrated an appalling lack of impartiality and a clear pre-determined desire for the Investigation to culminate in a termination of Dr. Dias’s employment.

A Biased Committee

25. One of the very first steps in commencing the Investigation was the University’s appointing the Investigation Committee.

26. While the Policy indicates Dean Heinzelman should appoint the Investigation Committee (*id.*), upon information and belief, in this case the Investigation Committee was appointed by Vice President Dewhurst.

27. The Policy also dictates Investigation Committee members should be “unaffected by the inquiry”. *Id.*

28. While Dr. Dias began the Investigation hopeful the Investigation Committee members would conduct their work with neutrality and fairness, upon his realization Dr. Dewhurst (who seated the Investigation Committee) was colluding with witnesses and others to manipulate the process, Dr. Dias became skeptical.

29. The Policy requires the Investigation Committee be comprised of “[University] faculty”. *Id.*

30. The Association of American University Professors (of which the University is a member) explains that because standards of faculty competence bear directly on the teaching and

research conducted in the institution, the faculty should have primary authority over decisions about such matters. *See Exhibit 2, American Association of University Professors, Policy Documents and Reports*, 11th ed., pg. 124.

31. Dr. Dias soon realized the Investigation Committee members did not consist of:
- a. “three members of *the* faculty, who are unaffected by the inquiry including one member of the Research Policy Committee.” Affidavit of Dr. Dias, Exhibit B, pg. 59, emphasis added.
 - b. “without a current or previous personal or professional relationship with Dr. Dias that could be considered a conflict of interests.” Affidavit of Dr. Dias, Exhibit A, pg. 3.

32. Instead, the University appointed three individuals (Dr. Marius Millot, Dr. Peter Celliers, and Dr. Marcus Knudson, with Dr. Millot serving as chair) who:

- a. are not members of *the* University faculty
- b. are not members of the Research Policy Committee
- c. who have serious conflicts of interest with Dr. Dias and will unequivocally be affected by the outcome.

33. Upon learning of the Investigation Committee composition, Dr. Dias wrote to the NSF to express his numerous concerns. *See Dr. Dias Affidavit, Exhibit C (Dr. Dias’s September 8, 2023 letter to the NSF).*

34. In his letter, Dr. Dias explained the deep-rooted and ongoing professional connections between Dr. Millot, a senior scientist at Lawrence Livermore National Laboratory (“LLNL”) and Dr. Celliers, a staff scientist at LLNL.

35. The power dynamics between Senior Scientists and Staff Scientists are subject to the hierarchical structure and the distribution of responsibilities within an organization. In such a hierarchical structure, Staff Scientists have influence over Senior Scientists, particularly concerning project involvement and career advancement. In this case, Dr. Celliers had authority and sway over Dr. Millot, making Dr. Millot's decision-making subject to Dr. Celliers's persuasion.

36. Additionally, Dr. Millot and Dr. Celliers have a substantial history of collaboration with the University's Laboratory for Laser Energetics ("LLE"). *Id.*

37. Dr. Dias raised concerns regarding the enduring rivalry that has persisted among Dr. Millot, Dr. Celliers, Dr. Marcus Knudson, and himself. *Id.*

38. The rivalry between Dr. Dias and these committee members dates to Dr. Dias's postdoctoral tenure at the Department of Physics at Harvard University and revolves around the investigation of metallic hydrogen in both solid and liquid states, with a specific focus on demonstrating superconductivity in the solid state.³ *Id.*

39. Scientific groups worldwide are vigorously pursuing the same research. In the United States, three prominent groups are at the forefront of this endeavor: (1) the Harvard group in collaboration with Dr. Dias's Rochester group; (2) LLNL, led by Dr. Millot and Dr. Celliers, and (3) the Sandia National Laboratories team, under the leadership of Dr. Marcus Knudson.

40. Thus, there exists a very competitive rivalry among these groups in the quest to achieve this milestone of metallic superconducting hydrogen.

³ Dr. Dias's research approach primarily involves static compression, in contrast to the methods employed by the Dr. Millot, Dr. Celliers, and Dr. Knudson group, who employ dynamic compression techniques.

41. The Investigation Committee did not begin its work starting from a place of neutrality, rather it determined to undermine the credibility of Dr. Dias's findings by questioning the validity of the data even when the data has been validated in multiple subsequent studies.

42. In example, the chair of the Investigation Committee had spent considerable time attacking Dr. Dias's 2017 groundbreaking work on metallic hydrogen, which provided the first evidence of solid metallic hydrogen, and has since been replicated and validated in subsequent studies.

43. Personal conflicts also exist amongst Dr. Dias and the Investigation Committee members.

44. During scientific conferences, Dr. Dias's academic advisor, Dr. Isaac Silvera, and Dr. Millot and have had numerous disagreements, and even disputes, regarding the interpretation of research data. As a result, at times, Dr. Dias and Dr. Silvera's work has been omitted from research papers authored by Dr. Millot. *Id.*

45. Dr. Millot also has a personal relationship with Dr. Dias's former collaborator and business partner, Dr. Ashkan Salamat, an individual with whom Dr. Dias recently terminated a professional business relationship.

46. Dr. Millot also has familial ties to Dr. Aude Pickard, the former partner of Dr. Salamat, and a close friend of Dr. Marius Millot's wife.

47. This network of personal relationships accentuates concerns regarding biases that could impact Dr. Millot's impartiality in his role as committee chair.

48. In addition to notifying the NSF, Dr. Dias also raised his concerns about the lack of impartiality of Investigation Committee members to Vice President Dewhurst in writing and in a

Zoom call on or around October 14, 2023. *See* Affidavit of Dr. Dias, Exhibit D (letter from Dr. Dias to Vice President Dewhurst).

49. Unfortunately, while Vice President Dewhurst apologized for not doing proper due diligence before forming the Committee, he made no changes to it. *See* Affidavit of Dr. Dias, Exhibit E (response from Vice President Dewhurst).

50. Conflicts of interest within the Investigation Committee and between the Investigation Committee members and Dr. Dias violate the NSF's requirement that there be a careful inquiry and investigation involving substantial fact-finding. *See* 45 C.F.R § 689.2(b).

51. Critically, the University has also violated the Policy's requirement that the committee comprise only members who "have the appropriate expertise and are unaffected by the inquiry." *See* Affidavit of Dr. Dias, Exhibit B, pg. 59.

University's Assumption of Guilt: Removal of Students

52. In August 2023, prior to the conclusion of the Investigation (and as more fully described in Dr. Dias's prior Article 78 petition and related exhibits), Dean Heinzelman made the unilateral decision to remove all of Dr. Dias's students from his laboratory, teaching, and mentoring. *See* Affirm. of J. Morgan Levy, Exhibit A (First Article 78 proceeding and exhibits).

53. Dean Heinzelman's actions undoubtable prejudiced these student witnesses - giving the impression of wrongdoing by Dr. Dias before the investigation was completed.

54. Additionally, while Dean Heinzelman reported that these students requested to be removed from Dr. Dias's supervision and mentoring, this is not true. *See* Affirm. of J. Morgan Levy, Exhibit A, pg. JMLAffDias000012, paras. 59-61, and JMLAffDias000157.

55. Provost Figlio ignored Dr. Dias's complaint of Dean Heinzelman's impingement of his academic freedom and instead endorsed her wrongful removal of Dr. Dias's students. *Id.* at JMLAffDias000186.

56. Professor Dias appropriately asked the University to establish a grievance committee concerning this removal of his students and advisees, but the University refused. *Id.*

57. On December 13, 2023, Professor Dias filed an Article 78 petition (the "December Petition") in the Supreme Court for the County of Monroe, requesting the court intervene to force the University to follow its policies and establish a grievance committee to redress the unilateral removal of students from his teaching, coaching, and mentoring responsibilities. *See* Affirm. of J. Morgan Levy, Exhibit A.

58. In response to the December Petition, in early January 2024, the University did establish a grievance committee without a court order, however, the grievance committee has not yet convened. *See* Affidavit of Dr. Dias.

University's Assumption of Guilt: Facilitating Retraction of Paper

59. The University, its Investigation Committee, and the law firm retained by the University, Ropes & Gray, inappropriately communicated with student witnesses, with the apparent intention of establishing a pretext for finding wrongdoing on Dr. Dias's part.

60. Vice President Dewhurst, the individual designated as point person with the NSF for the purposes of the Investigation, colluded with other University administrators including Dean Vamivakas and Dean Heinzelman, the University's outside counsel, and a student witness to the investigation, to request one of Dr. Dias's publications be retracted from the magazine *Nature*. *See* Affidavit of Dr. Dias, Exhibit F (emails between outside counsel, Vice President Dewhurst, and Dean Heinzelman regarding request to retract paper).

61. Vice President Dewhurst, and Deans Vamivakas and Heinzelman did so even though the Policy only allows for the University provost to request a paper be retracted AFTER a finding of research misconduct has been made. *See* Affidavit of Dr. Dias, Exhibit B, pg. 60.

62. University administrators' collaboration with lawyers and students to seek a retraction of Dr. Dias's paper indicates a result-driven approach that undermines the fairness of the investigation.

63. Even more concerning is the evidence of Vice President Dewhurst's contact with the editors of *Nature*, potential witnesses in the investigation, regarding the letter requesting retraction before the letter was finalized. *See* Affidavit of Dr. Dias, Exhibit G. This suggests a deliberate intent to influence and bias the editors at *Nature* to ensure they retract the paper.

64. These actions demonstrate a bias and prejudice that engenders a "presumption of wrongdoing," directly contradicting the mandate articulated in NSF's investigation referral letter.

University's Assumption of Guilt: University's Payment to Key Witness

65. Around August 10, 2023, Dr. Sachith Dissanayake, who held the position of Research Assistant Professor in Dr. Dias's research group in the Department of Mechanical Engineering at the University, terminated his contractual agreement with Dr. Dias.

66. Dr. Dissanayake's contract with Dr. Dias was to last two (2) years, commencing on July 14, 2023, and concluding on July 13, 2025, with his compensation sustained through grant funding.

67. Dr. Dissanayake's decision to terminate his contract with Dr. Dias appears to have been prompted by the University extending a separate contract to him, accompanied by remuneration directly disbursed by the University itself, rather than via grant funding.

68. After Dr. Dissanayake accepted the University's contract and left Dr. Dias, Dr. Dissanayake began a campaign to destroy Dr. Dias's reputation among students and University administration.

69. The communications between Dr. Dissanayake and the University's counsel demonstrate collaboration to damage Dr. Dias's reputation.

70. Leslie Thornton, counsel to the University, communicated with to Dr. Dissanayake for the purpose of securing the *Nature* retraction. *See* Affidavit of Dr. Dias, Exhibit H (all emails between Thornton and Dissanayake).

71. Dr. Dissanayake was eager to have the letter the group was preparing for the *Nature* editors completed.

72. When Dr. Dissanayake pressed for an update regarding a letter Ms. Thornton was drafting, her response contained the following verbatim statement: "rest assured that things are moving along steadily in the background." This response clearly reveals a preconceived plan among Dr. Dissanayake, Ms. Thornton with the University actively working in the "background" to ensure the investigation ended poorly for Dr. Dias. *See* Affidavit of Dr. Dias, Exhibit I (Email from Ms. Thornton).

73. Importantly, Investigation Committee members were not included on the email; rather it was a direct correspondence between multiple witnesses, the University, and counsel discussing the investigation and premature retraction of the *Nature* article.

University's Assumption of Guilt: Failure to Abide by Basic Tenants of Due Process

74. The Research Misconduct Investigation has been a sham proceeding devoid of the due process Dr. Dias deserves.

75. Dr. Dias was not permitted to bring an attorney with him to the Investigation Committee interviews, while the Investigation Committee was permitted to have (and did have) its own legal counsel present during Dr. Dias's testimony.

76. Ms. Thornton's presence also demonstrates a bias of the committee as Ms. Thornton was actively involved in preemptively reporting misconduct to *Nature*.

77. Ms. Thornton's role as the attorney hired to assist the Investigation Committee cannot be understated. In a room full of professors serving on an Investigation Committee (and perhaps with little Investigation Committee experience), and who were also aware Dr. Dias was represented by an attorney, Ms. Thornton would serve as resource and ultimate authority.

78. As Vice President Dewhurst shared with Dr. Dias in a June 5, 2023 email, "I'm also looping in two individuals who will be helping the University with this matter, and also assisting the Investigation Committee on an advisory basis. They are Mark Barnes and Leslie Thornton - counsel with the law firm of Ropes and Gray; they have extensive expertise in the area of research compliance/regulation (including research misconduct)." Affidavit of Dr. Dias, Exhibit J (June 5, 2023 email from Vice President Dewhurst to Dr. Dias).

79. Since Ms. Thornton was clearly biased against Dr. Dias, the Investigation Committee would, in turn, also be biased.

80. Dr. Dias was also unable to appropriately respond to the report. While he had access to the documents included as exhibits in the Investigation report through the Ropes & Gray's "portal", the University refused to allow Dr. Dias PDF versions of the documents with the exception of the report.

81. The body of the report is about 129 pages with about 15 separate claims of research misconduct. With all exhibits, the total report exceeds 400 pages, meaning Dr. Dias could not access the documents via PDF for at least 270 pages of exhibits.

82. This inaccessibility to more thoroughly read, mark up, and print the materials challenged Dr. Dias' due process rights and violated the Policy.

83. The Policy promises "[t]he person(s) whose conduct is being investigated will be given a meaningful opportunity to respond to [the allegations] in writing and in person before the committee. This shall include access to the relevant documents (and other evidence) and a reasonable period of time to prepare an appropriate response." *See* Affidavit of Dr. Dias, Exhibit B, pg. 59.

84. Moreover, because the Investigation will now undoubtably lead to an adverse determination concerning Professor Dias's employment, the University will have failed to follow its own procedures.

Failure to Accommodate

85. The Committee refused to provide Dr. Dias reasonable accommodations when requested.

86. The Investigation Committee failed to consider English is not Dr. Dias's first language.

87. Hailing from Sri Lanka, Dr. Dias occasionally encounters challenges in fully grasping the nuances of the English language and often requires additional time for information processing in a conducive environment.

88. Dr. Dias would have benefitted from an attorney to assist with the language of an Investigation and requested his attorney be present. This request was denied. *See* Affidavit of Dr. Dias, Exhibit K (email request for an attorney and Ms. Thornton’s response).

89. In example, when Dr. Dias requested a delay in meeting with the Committee due to his wife’s giving birth, the Committee responded indicating it would no longer meet with him again, at all.

90. In another example, the Committee took forty (40) weeks and one day, totaling 281 days, to prepare its draft investigative report; more than double the time identified in the Policy.

91. The Policy articulates an investigation should be completed within 120 days after its initiation. *See* Affidavit of Dr. Dias, Exhibit B, pg. 59.

92. When it concluded its draft report, the Committee sent the 500+ page draft to Dr. Dias in the evening of December 22, 2023, instructing him to respond in four weeks (24 business days). *See* Affidavit of Dr. Dias.

93. When Dr. Dias requested an extension to respond to the vast document, the committee denied his request to have an additional two weeks providing Dr. Dias only one extra week to respond during the Christmas and New Year holiday season, with a newborn.

94. The Committee’s and University’s clear desire to fast-track the delivery of this report is not indicative of a “neutral and objective” process.

The Draft Report is Biased

95. In its instructions to the University the NSF made clear the Investigation Committee was responsible for answering three questions:

- a. Does a preponderance of the evidence prove that Dr. Dias committed fabrication, falsification, or plagiarism, as defined by NSF’s regulation?

- b. If yes, does a preponderance of the evidence prove that the fabrication, falsification, or plagiarism constituted a significant departure from accepted practices of the relevant research community?
- c. If yes, does a preponderance of the evidence prove that the fabrication, falsification, or plagiarism was committed culpably (i.e., either intentionally (purposefully), knowingly, or recklessly), and is not honest error?

See Affidavit of Dr. Dias, Exhibit A, pg. 4.

96. Rather than answer these simple questions, the draft report is a condemnation of Dr. Dias's life's work.

97. Despite the policy not allowing the Investigation Committee sanctioning authority, the Investigation Committee offered a recommendation of sanctions for Dr. Dias, culminating in termination. See Affidavit of Dr. Dias, Exhibit B, pg. 59. By the Committee determining guilt and outcome, and not the provost, as the Policy dictates, it is inherently acting as judge and jury, and not offering Dr. Dias a fair review or response to the report, as his fate has already been predetermined.

98. The Investigation Committee's apparent hatred for Dr. Dias is clear by the hyperbolic findings implicating Dr. Dias as a threat to national security:

"All three institutions with which Respondent has been affiliated (WSU, Harvard University ("Harvard"), and the University) have trained many scientists currently employed at U.S. DOE National Laboratories, including several scientists involved in missions related to national security... The quality and integrity of the scientific staff and training at U.S. institutions is often cited as a key component of the national security enterprise. The misconduct uncovered in this investigation may damage, by association, the reputation of this enterprise in the eyes of allies and adversaries alike."

See Affidavit of Dr. Dias, Exhibit L, pg. 116.

99. Additionally, despite this commentary regarding Dr. Dias alleged threat to national security the Investigation Committee recommends the University Consider issuing a public statement summarizing the findings of this Investigation. *See Id.*

100. This contradictory suggestion does not align with the goal of the investigation nor their prior comments.

101. Finally, the investigation report alleges Dr. Dias engaged in “harassment and/or bullying” behaviors not in the scope of the Investigation Committee’s purview and which must be addressed pursuant to different University policies.

Failure to Seek Relevant Facts

102. The Investigation Committee insinuating Dr. Dias personally jeopardized national security is even more outrageous when considering it declined to ask him any relevant questions about the subject of the Investigation.

103. While Dr. Dias participated in several meetings with the Investigation Committee in person or via Zoom, in none of these meetings did the Investigation Committee ask Dr. Dias any questions about the alleged misconduct.

104. Despite this glaring absence of any information from Dr. Dias, the draft report makes clear the Investigation Committee concluded Dr. Dias engaged in research misconduct.

105. Given the Investigation Committee failed to ask Dr. Dias any questions about research misconduct this conclusion is certain evidence of bias.

106. Critically, the Policy’s definition of misconduct is “*intentional* misrepresentation of data, of research procedures, or of data analysis; and plagiarism and other serious improprieties in proposing, conducting, or reporting the results of research.” *See Affidavit of Dr. Dias, Exhibit B, pg. 58.*

107. Similarly, pursuant to NSF research misconduct regulations, a scientist can only be culpable of research misconduct if they acted recklessly, knowingly, or intentionally and provides guidance and definitions to help investigators assess scientists' acts using those terms. *See* Affidavit of Dr. Dias, Exhibit M (NSF's Assessing Intent in Research Misconduct).

108. The Committee could not make a meaningful finding about Dr. Dias's intent without speaking to Dr. Dias about the alleged conduct.

109. The Committee refused to interview all witnesses proposed by Dr. Dias, while it chose to interview witnesses clearly biased against Dr. Dias.

110. In example, the Investigation Committee failed/refused to interview the graduate and undergraduate students in Dr. Dias's group who possessed a deep understanding of the techniques such as Mr. Nugzari Khalvashi-Sutter and Mr. Sasanka Munasinghe.

111. Mr. Khalvashi-Sutter and Mr. Munasinghe were also two students not involved in the letter drafted by Vice President Dewhurst and Ms. Thornton in concert with various other students and sent to *Nature*.

112. The choice not to interview these two students highlights actual biases and conflicts of interest within the Investigation Committee's outcome-oriented proceedings.

Failure to Consider Credibility of Witnesses

113. The Committee also failed to consider information regarding witness credibility in its investigation.

114. In example, Dr. Salamat, another witness interviewed by the Committee has an obvious bias against Dr. Dias because he was fired from the company he cofounded with Dr. Dias.

115. Mr. Dylan Durkee, one of the witnesses called by the University, also had distinct credibility issues.

116. Mr. Durkee voluntarily departed from Dr. Dias's team in 2022, citing challenges that disrupted the work environment.

117. Mr. Durkee's departure came just after Mr. Durkee's former instructor at UNLV, Dr. Salamat, and Dr. Dias had just had a disagreement. Mr. Durkee's relationship with Dr. Salamat may have influenced his departure and aligned Mr. Durkee against Dr. Dias.

118. Mr. Durkee's negative attitude towards Dr. Dias escalated following the termination of his partner (now wife) from Unearthly Materials, Inc., a company with which Dr. Dias is affiliated.

119. Mr. Durkee was so upset about his partner's firing, he outwardly started talking poorly of Dr. Dias, by for example, advising students not to join Dr. Dias's research group.

120. Additionally, the University relied upon the testimony of Mr. Raymond McBride, a former student of Dr. Dias, with clear bias against him.

121. Mr. McBride, closely associated with Mr. Durkee, faced significant academic challenges. Despite acknowledging Mr. McBride's academic struggles, including a low GPA and limited research experience, Dr. Dias consistently provided Mr. McBride opportunities for improvement.

122. Despite individual meetings and support, Mr. McBride's confrontational approach and lack of progress in his PhD research persisted and Mr. McBride continued to struggle to understand the intricate components of his scientific doctoral work.

Allowing Biased Persons to Make Critical Determinations for the Committee

123. Mr. McBride's clear bias against and disdain for Dr. Dias is evident in his letter referring a witness to Vice President Dewhurst for the Investigation due to conflict with Dr. Dias, noting,

"Yesterday I was asked if there is anyone that would be worth contacting. You might want to contact Ashkan Salamat from UNLV. I'm not sure if he would be willing to talk but I heard there was recently a falling out between Ash and Ranga."

See Affidavit of Dr. Dias, Exhibit N.

124. Despite Mr. McBride's clear animus towards Dr. Dias, the University relied on Mr. McBride to review files and documentation to determine relevance for the Investigation Committee.

125. On August 10, 2023, Vice President Dewhurst emailed Mr. McBride asking to meet with him in person in order to determine which physical notes from the lab were relevant to the investigation. *See Affidavit of Dr. Dias, Exhibit P (Email from Dewhurst to McBride).*

126. Vice President Dewhurst makes clear Mr. McBride, a student, is making relevancy determinations, for the Investigation Committee when they meet the following week.

127. The Investigation Committee's reliance on the interpretations by students with a challenged understanding of the science of superconductivity regarding the experimental data undermines the credibility of the committee's findings.

128. Mr. McBride agreed to meet, and Ms. Thornton proposed a Zoom meeting for Vice President Dewhurst, Mr. McBride, herself, and copied Mr. Dale Hess, another University administrator. *See Affidavit of Dr. Dias, Exhibit O.*

129. Vice President Dewhurst and Ms. Thornton knew or should have known Mr. McBride did not like Dr. Dias.

130. The University's asking a student who (1) is clearly biased against the subject of the investigation, (2) is a witness to the investigation, (3) was struggling to understand the science at the heart of the investigation, and (4) does not have training and experience required to relevancy determinations to meet with administrators and University lawyers to determine for the Committee what is relevant is wildly inappropriate.

131. Yet this is exactly what the University did. In his email to Mr. McBride, Vice President Dewhurst stated, "the committee is hoping that you can assist in determining which of those files and documentation may be relevant to the investigation." *Id.*

132. The Investigation Committee should make their own relevancy determinations instead of relying upon biased and unqualified former students.

133. If the Investigation Committee members were not competent to determine relevancy, they should have identified an expert to assist them instead of a disgruntled former student of Dr. Dias.

134. In the same email to Mr. McBride, Vice President Dewhurst noted that "As part of the investigation, certain files have been set aside for review..." *Id.*

135. This sentence also implies Vice President Dewhurst had already chosen which of the available materials may be relevant for the Investigation Committee.

136. Upon information and belief, the University did not notify the NSF that it utilized Mr. McBride for the purpose of evaluating evidence, despite its instructions:

...any technical experts you might rely on to evaluate evidence related to this investigation should not have a current or previous personal or professional relationship with Dr. Dias that could be considered a conflict of interests. Please forward to me by April 14, 2023 a curriculum vitae (CV) for each official appointed to conduct this investigation...

142. The University failed to follow the Handbook procedures in two ways: (1) because the investigation relates to Professor Dias's academic freedom, a Grievance Committee must assess evidence and develop a factual record, and (2) because the investigation jeopardizes Professor Dias's tenure track, the UCTP must evaluate that factual record before any decision is made concerning Dr. Dias's employment.

143. The purpose of the Faculty Senate's University Committee on Tenure and Promotion Grievance Committee is to serve as a check on the sort of biased and conclusory Investigation Dr. Dias has been subjected to.

144. This case is about Dr. Dias's academic freedom. His research must be free from institutional pressures and personal animus. This is the subject of the December Petition, and why a grievance committee must properly evaluate all the foregoing facts and relevant materials related to his alleged misconduct.

145. As made clear by the AAUP, University faulty members sitting on the Grievance Committee are the appropriate individuals to evaluate weigh....whether bias against Dr. Dias influenced those University administrators in charge of the Investigation Committee. But the Investigation Committee has misappropriated all such matters to itself, and it has done a poor job.

146. On February 14, 2024, Dean Heinzelman notified Dr. Dias Provost Figlio received and accepted the recommendations of the Investigation Committee.

147. The letter states Dr. Figlio,

"as set forth in the Policy, serves as the deciding official in the investigation and is responsible for reviewing the final report and its recommendation, and for making the final findings as to whether research misconduct occurred with respect to any allegation, and, if appropriate, as to any corrective actions to be taken."

See Affidavit of Dr. Dias, Exhibit P.

148. This letter demonstrates a continued choice by the University to allow administrators with conflicts against Dr. Dias continue to make life-altering decisions.

Conclusion

149. The involvement of University administrators, i.e. Provost Figlio, Dean Heinzelman, and Interim Vice President Dewhurst working with the University attorney for the Committee to prepare a letter to be signed by students who would serve as witnesses before the Committee, requesting that *Nature* retract a paper that was the subject of the investigation and before the investigation was completed, is evidence of significant bias.

150. The conflict between the University's legal interests and the fair pursuit of truth compromises the integrity of the Investigation.

151. Provost Figlio's oversight of the Investigation and determination of outcome while he is the very subject of Dr. Dias's grievance demanding a grievance committee must be formed. Dr. Dias faces immediate and irreparable harm if the University can take any action against him before a grievance committee has appropriately investigated the foregoing matters.

152. Vice President Dewhurst, acting as the University liaison to the Investigation Committee, should maintain an unbiased and impartial stance.

153. The Investigation Committee is not suited to investigate these matters as they have neither the requisite academic background nor the impartiality required to fairly judge Dr. Dias's adherence to research standards.

AS FOR A FIRST CAUSE

The Research Misconduct Investigation Determination Is Arbitrary and Capricious

154. Professor Dias repeats and restates the allegations contained in the prior paragraphs of this petition as if set forth more fully herein.

155. The University's findings in the Investigation are driven by personal animus, unsupported by relevant evidence, and inconsistent with policies in the University's handbook.

156. This process was arbitrary and capricious, and only a neutral grievance committee can salvage Dr. Dias's rights to due process and a fair hearing.

157. Because of the University's arbitrary and capricious actions, in violation of its own procedures, Dr. Dias faces imminent and irreparable harm.

REQUEST FOR RELIEF

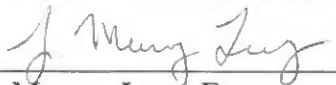
WHEREFORE, the undersigned Dr. Dias respectfully requests this Court issue a judgment on this Petition and enter an Order:

- a. compelling respondent to show cause why it should not be enjoined from taking any adverse action against Dr. Dias until a grievance committee establishes an unbiased factual record, and an unbiased investigation committee is convened to evaluate the allegations of research misconduct;
- b. awarding the undersigned legal fees and expenses incurred in making the instant petition for relief; and
- c. awarding such other and further relief as the Court may deem just and proper.

Dated: February 14, 2024
Monroe County, New York

Respectfully submitted,

J. MORGAN LEVY FIRM PLLC

By: 
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Fairport, New York 14450
E: morgan@jmorganlevyfirm.com
P: 585-678-1160

VERIFICATION

I, Ranga P. Dias, affirm the following to be true under the penalties of perjury:

I am the petitioner in the above captioned petition.

I have read the Petition and know the contents thereof, and the same is true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters, I believe them to be true. My beliefs, as to those matters therein not stated upon knowledge, are based upon facts, records, and other pertinent information contained in my files.

Dated: February 14, 2024
Monroe County, New York



Liyanaganage Ranganath Prabashwara Dias